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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,531	06/25/2003	Helmut Jerg	2000P13026WOUS	4119
46726	7590	02/10/2006	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			KIM, YOON YOUNG	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 02/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,531

Applicant(s)

JERG, HELMUT

Examiner

Yoon-Young Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 8,9,11-15,17 and 19 is/are rejected.
7) ☒ Claim(s) 10 and 16 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

1. In view of the Appeal Brief filed on November 25, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 8-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-25 of copending Application No. 10/603,758. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose a filter having a filter body with a plurality of filter openings, each having a passage cross-section, which varies automatically in response to a characteristic inherent to a medium flowing through the openings to filter the medium.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Oath/Declaration

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: this application should be filed as a national stage application of PCT/EP01/14300.

Information Disclosure Statement

5. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartelt et al., U.S. Patent No. 5,554,284.

Regarding Claim 8, Bartelt discloses a filter comprising: a filter body (Fig. 3, #17) having a plurality of filter openings (Fig. 1 and 3, #110) for filtering a medium flowing through the openings; and each of the openings having a passage cross-section which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 4, Lines 8-12).

Regarding Claim 13, Bartelt discloses the filter including filter openings being screened or covered by flap-like elements (#110), the flap-like elements having a first substantially covering position (Fig. 5a) by a force effect of the medium flowing through the openings and can be adjusted to a second increased passage opening (Fig. 5c) by an increased flow rate of the medium flowing through the openings (Col. 4, Lines 1-8).

8. Claims 8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobs, U.S. Patent No. 3,179,116.

Regarding Claim 8, Jacobs discloses a filter (#42) comprising: a filter body having a plurality of filter openings (#86) for filtering a medium flowing through the openings; and each of

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the openings having a passage cross-section which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 3, Lines 65-70).

Regarding Claim 14, Jacobs discloses a dishwashing machine (#10), the machine including a water medium utilized in the machine, comprising: a filter (Fig. 7, #19) for filtering the water medium in the machine; the filter including a filter body having a plurality of filter openings (#86) for filtering the medium flowing through the openings; and each of the openings having a passage cross-section, which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 3, Lines 65-70).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 8-9, 11-15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alabaster, U.S. Patent No. 3,122,148.

Regarding Claim 8, Alabaster discloses a filter comprising: a filter body (#9) having a filter opening (#24) for filtering a medium flowing through the openings; and having a passage cross-section which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 4, Lines 24-30). However, Alabaster does not disclose a plurality of filter openings. Duplication of parts has no patentable significance unless a new and unexpected result is produced. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

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Regarding Claims 9 and 15, Alabaster discloses filter opening being screened or covered by an element whose state relative to the opening varies under the influence of the heat of the medium flowing through the openings (Col. 4, Lines 24-30).

Regarding Claims 11-12 and 17-18, Alabaster discloses that the elements are formed from a bimetal material (Col. 4, Lines 24-30).

Regarding Claims 13 and 19, Alabaster discloses that the filter opening is screened or covered by a flap-like element (#24). It would have been obvious to one of ordinary skill in the art that the opening could be adjusted to a second increased passage opening by an increased flow rate of the medium flowing through the opening because of the flexible characteristic of the flap-like element (Col. 4, Lines 24-30).

Regarding Claim 14, Alabaster discloses a dishwashing machine (C), the machine including a water medium utilized in the machine, comprising: a filter (#9) for filtering the water medium in the machine; the filter including a filter body having a filter opening (#24) for filtering the medium flowing through the openings; and each of the openings having a passage cross-section, which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 4, Lines 24-30). However, Alabaster does not disclose a plurality of filter openings. Duplication of parts has no patentable significance unless a new and unexpected result is produced. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Allowable Subject Matter

11. Claims 10 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Regarding Claims 10 and 16, Alabaster does not teach that the screening or covering elements are punched out of the filter body.

Response to Arguments

12. Applicant's arguments with respect to Claims 8-19 have been considered but are moot in view of the new ground(s) of rejection.

Bartelt, Jacobs, and Alabaster teach the invention as claimed.

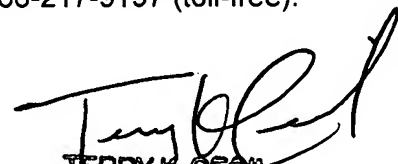
Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yoon-Young Kim whose telephone number is (571) 272-2240. The examiner can normally be reached on 8:30-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YK
02/06/06


TERRY K. CECIL
PRIMARY EXAMINER